THE HONOLULU REPUBLICAN.

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EDWIN S. GILL - - - EDITOR

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HONOLULU, H. T., NOV. 2, 1900.

WEATHER YESTERDAY.

Minimum Temperature—14 legrees Maximum Temperature—60 degrees but meter —60 % at 8 p. m. Halnfall - 0 ld inches. Mean Dow Point for the Day-65 IT Mean Relative Humidity - 68. WINDS

PORECAST FOR TORAY. Moderate winder generally fair.

REPUBLICAN TICKET.

For Delegate to Congress. "Unexpired Term 55th Congress.) SAMUEL PARKER.

For Delegate to Congress. Full Term 57th Congress.) SAMUEL PARKER.

For Senators Island of Oahu. W C. ACRI. CLCIL BROWN SECRET R. CARTER.

CLARENCE L CRABBE

ILENRY WATERHOUSE For Representatives Fourth Dis-

trict. WILLIAM AYLETT. A F. GILFILLAN.

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A. G. M. ROBERTSON. For Representatives-Fifth District.

W. J. COELHO. H. R. HITCHCOCK. ENOUTH JOHNSON.

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The demand upon the advertising space in the Sunday Republican has been very heavy this week, but some choice positions in next Sunday's paper yet remain. If you want to take advantage of presenting your business opportunities to the most people for the least money

It will be a great paper in every respect Last Sanday's Republican was acknowledged to be the best Honolulu and we promise you that the boy on the street. one for the coming Sunday will be fully up to the standard. As an evidence of how live advertisers and readers of a good paper look upon The Republican we append the following letter:

To the Editor of The Republican-

Sir You had a good paper Sundaythe best paper you have ever published. It was full of good, live news, and the difesting. A man will dig his nose in a paper like that. It is too had that so few merchants here understand the real value of the Sanday paper as an advertisting medium. I notice that only the larger advertisers take advantage of it. To show my appreciation I will state that for the short time you have carried my first ad the results have been surprising. KING BROS.

MUST OBEY THE LAW.

Secretary Cooper is unfortunate in his citations in the endeavor to bolster up a weak cause, in that every one of them totra are taken" or "illegal voters are allowed to participate." His proposal to continue the polls open after the legal hour for closing, opens the way for all manner of fraud and illegal voting and by the very citations he gives, an election held under such circumstances

In holding that the section of the law directing the hour at which the polls shall be opened and closed is merely directory he is clearly in error. Mr. Cooper, in taking this view, evidently election law, after saying that the polls shall remain open until 5 of the clock in the afternoon further says, "after which the polls shall be closed and the votes counted as hereinafter provided." This clause clearly makes the closing of the polls at 5 o'clock mandatory instead of directory. It is not analo- spects especially with reference to any gons to the New York cases cited by him in which the law says that the polls shall there being nothing in the New York statute declaring that at sunser the polis shall remain closed and the count pro-

161: "Those provisions of the law which dreds of people will be deprived of their of their duties) is afraid of the legality fix the time or place of holding elections | right of suffrage. are to be construed as mandatory and | From what has been said it is conced- upon the attorney general of the territory

"It is of far more consequence to o'clock. the people of this state and to the stabil. Section 90 of the election laws reads much more credence and respect by the ity of our form of government that these as follows: "Upon receiving the ballot people. But, then, the attorney general provisions should be held mandatory so folded as aforesaid, the voter receiv- is no doubt not willing to make himself than is the fact that occasionally the lng the same shall forthwith proceed into so ridiculous before the public as Mr.

hering to them. (Atty. Gen'l v. Mc-Quack 94 Mich., 439.)" In Atty. Gen'l. v. Stilson, 108 Mich., 419, the court especially cited the former decision given above and said: "The law has attempted to provide uniform and strict regulations for elections." Then, discussing the case at issue, it further says: "The provisions of the law would be held mandatory and we think they should be in

this instance." In Major v. Barker, 99 Ky., 305, the court held that the provisions of the law his ballot for him were mandatory and that "to permit the clerk or other election officers to assume, either from the roter's statement or their alleged personal knowledge that the voter was unable to mark his own ballot, was to open the doors for wholesale fraud."

In Varney v. Justice, 86 Ky., 896, the constitution of Kentucky provided: 'That all elections by the people shall be held between 6 o'clock in the morning Three Months, by Mail or Carrier. 2.25 and 7 o'clock in the evoning," one was held elected who had received the most rotes at 7 p. m., though the polling place was kept open until 10, and when closed the other party had the majority.

In Hutchinson v. Woodruff the New Jersey court held that "Even though the result may not have been affected, yet, if a radical change is made in the hours the election is void."

"The term election implies a choice by an electoral body, at the time and substantially in the manner and with the safeguards provided by law, of a qualified person to an office. The act of choice must be done, the election must be conducted, as prescribed by law and under the safeguards which the law affords. Without the existence of these, at least in substance, however unmistakable the fact of choice, there is no election in law. The act of election derives all its force and validity from its substantial conformity to the constitution and laws." (Foster v. Scarff, 15 Ohio St., 532.)

"It is those provisions of the statute relating to the time and place of holding elections, the qualifications of voters, and such others as are expressly made essential prerequisites to the validity of an election that are held to be mandatory; all others are directory merely; . . But it is equally well settled that neglect of directory provisions of a statute designed to prevent fraudulent voting is ground for rejecting the entire vote of

a precinct." (Russell v. McDowell, 83 Cal., 77.) "The polls should be opened and closed at the hour, if any, fixed by the statute." (Am. and Eng. Enc. of L. p. (91.) "An election must not only b held at the time and place prescribed by law, but it must also be conducted substantially in the manner and with the formalities prescribed." (Supra., p

It seems to us perfectly clear that any change in the hours for holding the polls open as provided by the election law o Hawaii would vitiate the election and Secretary Cooper could not have been se orth for the consideration of the people If he had been hunting for some teric which would invalidate the election and cause it to go for naught he could no to accomplish such an object. It would hardly seem possible that Mr. Coope ould have had such an idea in view though his position on this question ha led many people to believe that the whol plan was, and is, a scheme to invalidat ertain parties wished it to. We cannot bring ourselves to take this sordid view of the matter. Mr. Cooper simply o'er caped himself and proposed to issue in structions for which he had, and has, no more authority to issue than any news

SUGGESTS A WAY.

To the Editor of The Republican-

Sir: It is one of the proud boasts of the English common law that there is 'no wrong without a remedy." Legal difficulties may arise that, for the moment, seem unsurmountable, but when approached in the light of the foregoing maxim the way over the barrier is made olain. So with reference to the confessed weakness of the arrangements for the coming election which involves the use of only three voting compartments in precincts where there are more voters | Minn., 274.) than can possibly be accommodated in

Several plans have been suggested for vercoming the difficulty. One is to keep the polls open after 5 o'clock (the legal time for closing), if there are any voters who have been deprived earlier of the use of a compartment. Another suggestion is to build more than three compartments in the large precinct polling

The trouble with these suggestions is that they each run counter to an express prohibition of statute. Section 78 of the election laws provides for "not more than three voting shelves or compartpolls shall be kept open continuously un- result." til 5 of the clock in the afternoon, "after which the polls shall be closed."

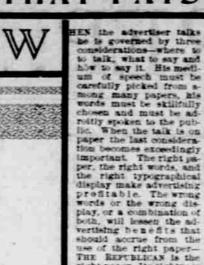
To add to the number of compartments would be plainly against the statute, and it would be equally so to keep the polls open after the hour of 5 o'clock. Now. is there any method which would enable the state of Washington held: "The all of the voters to cast their ballots without any affirmative violation of the have booths erected which complied with statute? It is believed that there is.

the so-called Australian ballot law of Hawaii is very brief when compared with ter, 50 Am. St. Rep., 900.) the statutes of the states and territories of the country. It is silent in many reforfeiture of votes for failure to observe its requirements. The problem, then, is to so arrange as to permit of voting election shall be conducted? If the govby all electors and yet not infract the ernor, who is the executive officer of the statute to an extent that would endanger the vote as cast. For it must be con- the power to direct or instruct the inceded that unless there be at least some spectors as to their duties (or, rather, McCrary, on elections, says, section slight deviation from the statute, hun- on Mr. Cooper's plan, as to the violation

ed that there should not be more than for an opinion? Surely, Mr. E. P. Dole Sunday "In passing upon the same question the three voting compartments made, and is quite as competent as Mr. Cooper to supreme court of the state of Michigan that the polls should be closed at 5 pass upon the election law of Hawaii, Is the Greatest Sunday Newspaper in the

will of the people may be defeated by ad- one of the compartments provided for the Cooper is making himself just now.

THE KIND OF TALK THAT PAYS



right paper, its rightness is best shown when the right kind of advertising talk is used to claim the attention of eighteen hundred REPUBLICAN read-ers. The preparation of talk is a matter worthy of usidaration. If you are an advertiser in THE REPUBLICAN and sire to make a profitable medium still more profitable, but are in doubt concerning the most effective way of talking to the public, consul-our advertising depart ment; if you take or co template taking extra space in THE SUNDAY RE-FUBLICAN, co-operation with this department will

assist in making the in-crease of space doubly re-munerative. Your profit is our gain—we cordially ender our assistance purpose and shall then and therein mark

his ballot in the manner herein pre-

*cribed."

The provision that the voter "chall forthwith proceed into one of the compartments . . and shall then and herein mark his ballot" is merely diectory and not mandatory. Let the disinction between these terms be under stood. Sutherland, on statutory constitution, says: "The consequential disfinction between directory and mandatory statutes is that the violation of the former is attended with no consequences, while a failure to comply with the requirements of the other is productive of serious results." Bishop on Stat. Crimes, section 254: "A statute is called mandatory when, if not all of its provisions While the statute directs that the voter

are complied with according to their terms, the thing done is, as to it, void." shall mark his ballot while in one of the compartments, it is silent as to the consequences if the ballot be not there marked. In some of the states the election officers are required to decline ballots that are not prepared strictly in accordance with the statutory directions. Not so in Hawaii. There is nothing to vitlate the ballot or the vote at the precinct if any number of voters should choose to mark their ballots while out-•ide of the little compartments, though within the prescribed enclosure so that to accommodate the crush of voters some of them could use a table or the wall or a book on which they could mark their ballots.

The provision for the secret con-partment is a privilege intended for the voter and to protect him in preparing a secret ballot. The public has an interest in this secrecy only to the extent that the right may be exercised at the option of the individual voter. It is a right which the voter may insist upon and it is the duty of the election officers to see that he is so accommodated. But it is also a privi ege which he may waive. The sanctity of the ballot and the fairness of the election are not involved in the failure to observe this method. There is nothing about it that could possibly void the

Bearing in mind that there must be a stretch of terms somewhere to get in all of the votes, the method described involves the least possible danger-nay, it is believed to be absolutely safe as

against legal attack. In the Illinois supreme court it was held that if votes were cast at the polls after the hour of closing, sufficient to change the result, the irregularity is

fatal. (Pratt v. People, 29 Ills., 54.) The supreme court of Minnesota held that the votes of a precinct will be rejected if there is evidence that votes were cast after the hour of closing. (46

Mere irregularities will not vitiate the rotes at a precinct. Paine on Elections. p. 424, says "that a mere irregularity, in conducting an election, which does not deprive a legal voter of his vote, or admit a disqualified voter to vote, or cast uncertainty on the result and has not been occasioned by the agency of a party seeking to derive a benefit from it, should be overlooked in a proceeding to try the right to an office depending on such elec-

In Vol. 18, Century Edition, American Digest, there is a long list of cases cited to support the proposition that "an election is not invalidated by an irregularity ments." Section 80 declares that the which is not shown to have effected the

While the keeping open of the polls after the regular hour of closing could affect the result any variance in the oute ber or absence of voting comparements could not possibly affect the result. In fact that the election officers failed to the law, found in the eighth finding, was By way of preface it may be said that an irregularity which could not vitiate the election," (Moyer v. Van De Van-

SCRIPTIS LEGIBUS.

Why is Secretary Cooper, whose duties clerical, presuming to direct how the territory and the only official who has of the proposition, why does he not call and certainly his opinion would be given

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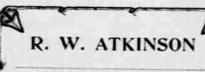
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